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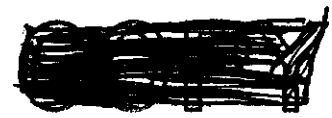

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

AUG 19 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 01-131
Table of Allotments,	)	MM Docket No. 01-133
FM Broadcast Stations	)	
(Benjamin, Texas)	)	
(Mason, Texas)	)	
	)	
	)	
	)	

To: Assistant Chief, Audio Division
Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Rawhide Radio, LLC ("Rawhide"),[1] by its counsel, hereby submits its Opposition to the Petition for Reconsideration filed by Charles Crawford on July 8, 2002 in the above-captioned proceedings.[2] The Petition for Reconsideration argues that the Commission should not have dismissed Crawford's Benjamin and Mason proposals due to the pendency of MM Docket 00-148 (Quanah, Texas) with which they are in conflict and to which they would be considered late filed. Crawford argues that he could not have reasonably foreseen that he needed to file his Benjamin and Mason proposals by the comment date in MM Docket 00-148. He also argues that the Joint Parties, who filed the counterproposal with which his proposals conflict, were involved in a scheme with the Quanah petitioner meant to subvert the opportunity for counterproposals. Rawhide believes that the Commission was correct in dismissing the Benjamin and Mason

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1 Rawhide is one of the Joint Parties referred to in Crawford's Petition for Reconsideration. The other parties involved in the Quanah Counterproposal at issue have decided not to respond to Crawford's arguments. However, their decision not to respond should not be taken in any way to mean that they concede any of the allegations Crawford raises.

2 The FCC published notice of the filing of the Petition for Reconsideration on August 2, 2002. 67 FR 50438. That publication set an opposition date of August 19, 2002.

proposals. Crawford's comments with regard to the Joint Parties are speculative, with no basis in fact, and are not worthy of consideration by the Commission. In support hereof, Rawhide states as follows:

1. As stated in the Reports and Orders (DA 02-1372 and DA 02-1389, released June 14, 2002) in the Benjamin and Mason proceedings, any proposals filed in conflict with the proposals under consideration in MM Docket 00-148 should have been filed by October 10, 2000. Crawford filed the Benjamin petition on May 28, 2001 and the Mason petition on May 25, 2001. Crawford recognizes that he filed too late to be considered in conflict with the proposals in the Quanah proceeding but argues that he could not have foreseen the "humongous" filing by the Joint Parties, which, he argues, did not meet the "logical outgrowth" test, citing Weyerhauser Company v. Costle, 590 F.2d 1011 (D.C. Cir. 1978); Owensboro on the Air v. U.S., 262 F.2d 702 (D.C. Cir. 1958); and Pinewood, South Carolina, 5 FCC Rcd 7609 (1990).

2. Crawford is basically attacking the FM allotment rule making process, arguing that it allows multiple proposals that can not be reasonably foreseen by a party who intends to file his own proposal (in Crawford's case seven (7) months later). Crawford's complaint is absurd. The system has worked well for 40 years since the FM Table was created in 1962. There have been numerous proceedings during the last 40 years that contained multiple proposals stretching across entire states and resulting in allotment proposals that were likely "unforeseen" by one person or another. Any time a counterproposal is filed, it could impact and preclude other proposals for hundreds of miles in all directions. In addition, proposals are continuously being filed and may inadvertently conflict with other pending proceedings even though the petitioner did not intend to create a conflict. The Commission recognizes this possibility and warns parties interested in filing petitions not to wait. See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 8 FCC Rcd

4743, 4745 (1993). The Commission has urged parties to file their proposals as early as possible because others are filing applications to change sites, or petitions/applications to upgrade the class of channels, or to simply change channels. See Conflicts, supra.

3. In any event, Crawford's complaint regarding the rule making process rings hollow in this case, because the timing of the Quanah proceeding evidently had nothing to do with his Benjamin and Mason proposals. Crawford filed his proposals seven months after the Quanah filing date. It is simply not believable that Crawford would have filed seven months earlier if only he had known about the eventual scope of the Quanah proceeding.

4. There is no way to accommodate late-filed conflicting petitions or applications in an efficient administrative manner. Would Crawford have the Commission accept his late-filed petitions based on Crawford's opinion that the pending proposals in Quanah were not within the "scope" of the original petition? What is the scope of the original petition? Is it 100 miles? 200 miles? Is it as far as Crawford can foresee a conflict? Should Crawford be permitted to file late and occupy spectrum that other parties could use in legitimate non-conflicting proposals while the Commission makes a determination? Should the Commission issue a Further Notice of Proposed Rule Making and allow additional counterproposals because some party seven months later asserts that he could not have foreseen a conflict? Of course not. Crawford's complaint has nothing to do with foreseeable proposals. The spectrum is dynamic and ever-changing. Spectrum becomes available and/or becomes precluded with any filing that uses spectrum. The filing of a petition gives notice to the public that related proposals should be filed as soon as possible. The system is first-come, first-served for applications, and administrative deadlines are established for rule makings pursuant to the Commission's authority to manage its proceedings. It bears repeating that Crawford filed seven months late, which means he did not withhold his filings on October 10, 2000, the comment date for Quanah, due to lack of a foreseeable conflict.

He did not file them simply because he was not ready to file until seven months later. Crawford's arguments regarding "logical outgrowth" and the multiple proposals involved in the Quanah proceeding clearly miss the point.

5. As for Crawford's speculations and accusations concerning the circumstances surrounding the filing of the Quanah petition and the Joint Parties' alleged involvement, Rawhide would rather not dignify the charges set forth in Petition for Reconsideration by responding to them. However, Rawhide will say this much. Crawford makes much of his "discovery" that the Joint Parties were working on portions of their proposal as early as 1998. Indeed, the Joint Parties did begin the process in 1998. During the next couple of years, there were efforts made to put together the proposal. The Joint Parties were vigilant in watching the FCC releases for proposals that may have precluded their own proposal. When the NPRM was issued in the Quanah proceeding, the Joint Parties knew that they needed to complete their proposal and come to agreements with all participating stations by the October 10, 2000 comment date. But when October 10, 2000 came, the Joint Parties' proposal was not ready for filing. It admittedly did not have the consent of Station KICM, Krum, Texas to downgrade its station from its pending application for Class C1 to Class C2. The Joint Parties had no choice but to file or be forever precluded from doing so.

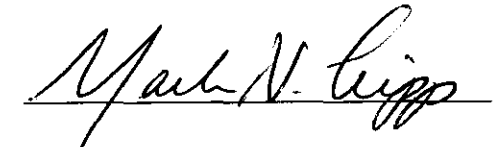
6. If the Joint Parties were involved in the filing of a petition, like the Quanah petition, which would permit their filing as a counterproposal, wouldn't they wait until they were ready to file? Does Crawford think the Joint Parties would intentionally set a deadline for themselves that they could not meet? Having taken so long to make a complicated proposal acceptable, does he think the Joint Parties would risk all of their time, hard work and expense on the chance that they would not be ready to file when the deadline came. The truth is that the Joint Parties intended to file their proposal as a petition for rule making. They knew that others

like Crawford could file counterproposals, and they had no reason to be afraid of that procedure. The Joint Parties believed they had put together a proposal that met the Commission's priorities and public interest standards, and that they had a strong proposal with a good chance of success. Clearly the Joint Parties' proposal would have been preferred over Crawford's 6th FM channel at Mason (population 2,134), or first local service at Benjamin (population 264).[3]

7. In the end, all of Crawford's pugilism amounts to nothing. According to his now-dismissed petitions, his desire was simply to apply for new stations at Benjamin and Mason. But as a result of recent allotments, Crawford can file an application for a new station at Mason or at Benjamin as soon as the applicable window filing period opens. Thus, if Crawford's goal in filing this petition for reconsideration is to achieve the opportunity to file applications for new stations at Benjamin and at Mason, he has already succeeded and the petition can be dismissed as moot. However, Crawford seems not to be content with that opportunity, and will not be satisfied unless the Joint Parties' proposal is denied.

Respectfully submitted,

RAWHIDE RADIO L.L.C.

By: 

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August 19, 2002

Its Counsel

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[3] On June 5, 2002, in the same Mason proceeding at issue here, the Commission allotted Channel 269C3 to Mason as its 6th FM channel (see DA 02-1389), and on July 17, 2002 in MM Docket No. 01-280 the Commission allotted Channel 237C3 at Benjamin as its first local service (see DA 02-1765).

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary at the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 19th day of August , 2002 caused to be mailed by first class mail, postage prepaid, copies of the foregoing " **Opposition To Petition For Reconsideration**" to the following:

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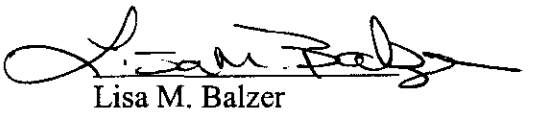

Lisa M. Balzer